Supreme Court, U. S.
FILED
MAY 18 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1516

PIERRE J. WESSEL,

Appellant,

v.

PENNSYLVANIA STATE BOARD OF LAW EXAMINERS,

Appellee.

ON APPEAL FROM
THE SUPREME COURT OF PENNSYLVANIA

REPLY BRIEF

DAVID J. ONTELL
510 Fifth Street, N.W.
Washington, D.C. 20001
(202) 638-1696
Attorney for Appellant

Washington, D.C. • THIEL PRESS • (202) 638-4521

TABLE OF CONTENTS

Page

REPLY BRIEF 1

ARGUMENT 1

CONCLUSION 5

CERTIFICATE OF SERVICE 6

TABLE OF AUTHORITIES

Cases:

In Re Griffiths, 413 U.S. 717 (1973) 4, 5

Murphy v. Pennsylvania State Board of Law Examiners, No. 78-1048 3

Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 252 (1957) 4

Rules:

Rules Relating To Admission to the Bar of the Supreme Court of Pennsylvania, amended as of January 22, 1976:

Rule 8-C-2 . . . . . 2, 3

Rules Relating To Admission to the Bar of the Supreme Court of Pennsylvania, adopted June 6, 1977:

Rule 205 3

Rule 222(a) 4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1516

PIERRE J. WESSEL,

Appellant,

v.

PENNSYLVANIA STATE BOARD OF LAW EXAMINERS,

Appellee.

ON APPEAL FROM
THE SUPREME COURT OF PENNSYLVANIA

REPLY BRIEF

In answer to Appellee's Motion to Dismiss or Affirm, Appellant submits the following Reply Brief urging this Court to take jurisdiction on the ground that there is a substantial federal question.

ARGUMENT

Appellee's Motion to Dismiss or Affirm presents no arguments supporting the argument that this appeal fails

to present substantial federal questions. Their statement and argument present numerous errors about Mr. Wessel's education and his contentions in the lower court.

As to Mr. Wessel's education, we have never contended he had actually completed the study of law at Temple. Such a statement is a gross distortion and misunderstanding of Mr. Wessel's contentions. If this were his contention he would never have delayed 3 years, and gone to law school 2 more years before making a second request to take Pennsylvania's test. His contention has always been that the totality of his education and experience give him "equivalency." Our understanding was that he would be evaluated as if he were a graduate of a foreign Law School. All concerned knew he did not graduate from Temple, and all knew that he did not rely on his attendance at Temple, alone, to establish his "equivency."

Mr. Wessel graduated from International School of Law, a school accredited by the State of Virginia and the District of Columbia, though not the A.B.A. He depended on this as well as his work experience and bar membership to demonstrate his "equivalency," just as any graduate of a foreign law school would have had to do. Mr. Wessel was given no chance to demonstrate "equivalency" of legal education in this manner. Instead, the Board, ignoring its agreement, applied Rule 8-C-2 to Mr. Wessel in the same way they had applied it before his Petition for Writ of Certiorari to this Court. The only difference was the use of a "hearing" to sanctify its action.

The assertion that foreign law schools are outside A.B.A. jurisdiction assumes and infers that the geographical jurisdiction of the A.B.A. is conferred by some internal force of the A.B.A. that subordinates others to it. Of course, it is only each state that chooses the A.B.A.

as a vehicle for convenience. Unlike this Court, which can impose itself from above by virtue of power greater than the court below it, the A.B.A. gets its "power" from those that voluntarily accede to its standards. Because its power is self assumed, it can expand and collapse its "jurisdiction" as is necessary to its own purposes, while having power no greater than others give to it. The organization sustains what powers it does have by correctly reading the desires of its constituents and reacting to their satisfaction. If the A.B.A. wanted to evaluate foreign law schools, and so take "jurisdiction," then that would be in their purview, too.

While the Board of Law Examiners is guided by rules set down by the Supreme Court of Pennsylvania, these rules are subject to interpretation on a case by case basis; frequently, the Court makes exceptions based on criteria outside the rules or no criteria at all. The interpretation of Rule 8-C-2, here, was not explicit at the time of the application, and is irrational when related to the purpose for which it was enacted. The contentions of the Board about the rational relation of the state rules to competency are exactly what is at issue, here. This Court is urged not to accept, in this motion, Appellee's conclusory statements as dispositive of the question.

The Board's contention that *Murphy v. Pennsylvania State Board of Law Examiners,* No. 78-1048, was an appeal of the same rule is not supported by the record. That case did not address itself to Rule 8-C-2 or its successor, Rule 205,[1] directly, but instead, sought to

[1] Rule 205 says:

The Board, under such standards, rules and procedures as it may prescribe, may extend the provisions of Rule 203 (relating to the admission of graduates of accredited institutions) to any applicant who has completed the study of law

[footnote continued]

argue denial of due process and equal protection because others, though unqualified, were allowed entry into the examination under Rule 222(a),[2] permitting those otherwise unqualified to take the examination. Neither the same rule nor the same grounds were advanced. That appeal sought to attack *acts* not reviewed in the court below. This appeal directly attacks a *rule* that was reviewed below.

That this case presents substantial federal questions is demonstrated by the cases cited by the Appellee. The first, *Schware v. Board of Bar Examiners of the State of New Mexico,* 353 U.S. 252 (1957), reviewed that state's rejection of an applicant on grounds related to character. The second, *In Re Griffiths,* 413 U.S. 717 (1973), examined Connecticut's right to exclude foreigners from law practice. Here, it is Americans, or at least those likely to be Americans—those going to certain American law schools—that are facing exclusion. If this Court decides the issue, the implication for non-A.B.A. accredited law

in a law school which at the time of such completion was not located within the geographical area encompassed by the accreditation activities of the American Bar Association and who has been admitted to practice law in and is in good standing at the bar of a foreign country, as evidenced by a certificate from the highest court or agency of such foreign country having jurisdiction over admission to the bar and the practice of law.

Note: This rule makes clear that the Board does not have the power to entertain applications from persons who have "read law" in a law office, studied law in the United States in unaccredited law schools, etc.

[2] Rule 222(a) says:

(a) General rule.—Except as prescribed by Rule 221 (relating to marking of bar examination papers) any final determination of the Board may be reviewed by the Supreme Court.

schools and their students will be substantial, indeed. If the Court upholds Mr. Wessel's right to take the bar examination then thousands of others will have a right to do so. If the Court decides otherwise, then non-A.B.A. schools could face doom. This case has the potential for affecting substantially more people than even *Griffiths.*

CONCLUSION

For the foregoing reasons, the Appellant, Pierre J. Wessel, Esquire, prays this Court deny the Appellee's motions, and take jurisdiction of this case.

Respectfully submitted,

DAVID J. ONTELL
510 Fifth Street, N.W.
Washington, D.C. 20001
(202) 638-1696
Attorney for Appellant

CERTIFICATE OF SERVICE

This is to certify that I have mailed three (3) copies of the foregoing Reply Brief, postage prepaid, to Jonathan Vipond, III, Esquire, 1414 Three Penn Center Plaza, Philadelphia, Pennsylania 19102, Attorney for Appellee, this 18th day of May, 1979.

DAVID J. ONTELL